

Before the
Federal Communications Commission
Washington, DC 20554

2001 SEP -6 P 3: 28

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
DeKalb County School System)	File No. SLD-153570
Decatur, GA)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: August 31, 2001

Released: September 4, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Common Carrier Bureau has under consideration a Request for Review submitted by DeKalb County School System (DeKalb), Decatur, Georgia, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ DeKalb seeks review of SLD's decision to deny in part DeKalb's request for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we grant the Request for Review and remand to SLD for further determination in accordance with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing

¹ Letter from Bette M. Swilley, DeKalb County School System, to Federal Communications Commission, filed June 22, 2000 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bette M. Swilley, dated October 26, 1999 (Funding Commitment Decision Letter).

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.⁴ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) exempts contracts entered on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract. Section 54.511(c)(1) also provides that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) would be exempt from the competitive bidding requirement for services provided through December 31, 1998.⁶ The Commission established these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.⁷ In addition, once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time. Having complied with the competitive bidding requirement prior to signing the contract, the applicant need not submit any additional FCC Form 470s for the duration of that contract.⁸

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

⁵ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁶ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁷ See *Universal Service Order*; *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 6732 (1999), para. 10 ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.").

4. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.⁹ The Commission has concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high.¹⁰ In order to ensure that schools and libraries contracting for services between July 10, 1997 and January 30, 1998 did not negotiate long-term contracts and thereby avoid the competitive bidding requirement altogether, the Commission limited the exemption of the competitive bidding requirement for contracts signed between July 10, 1997 and January 30, 1998 to services provided through December 31, 1998, regardless of the duration of the contract as a whole.¹¹ Applicants with contracts signed during the period between July 10, 1997 and January 30, 1998, therefore, must under program rules re-bid contracts for periods subsequent to December 31, 1998.

5. In its FCC Form 471 for Funding Year 2 (July 1, 1999 to June 30, 2000), DeKalb listed January 12, 1998 as the contract award date for 69 of its funding request numbers (FRNs).¹² On July 2, 1999, however, DeKalb provided SLD with documentation indicating that the contract at issue was signed not on January 12, 1998, but rather on January 4, 1996, and extended on February 24, 1997.¹³ Despite this information, SLD issued a Funding Commitment Decision Letter on October 26, 1999 denying 69 FRNs, reasoning that because the January 12, 1998 contract award date that DeKalb listed on the FCC Form 471 for those FRNs fell between July 11, 1997 and January 28, 1998, those 69 FRNs governed by the contract were ineligible for discounts for Funding Year 2 because DeKalb did not re-bid the contract.¹⁴

6. On November 12, 1999, DeKalb appealed the partial denial of its funding request to SLD.¹⁵ In its April 10, 2000 Administrator's Decision on Appeal, SLD denied DeKalb's appeal, explaining that DeKalb's failure to re-bid the services requested in the 69 FRNs necessitated the denial of discounts.¹⁶ SLD deemed the re-bidding necessary in light of the January 12, 1998 contract date, and did not address the discrepancy in contract award dates

⁹ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480.

¹¹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

¹² FCC Form 471, DeKalb County School System, Decatur, Georgia, filed April 2, 1999.

¹³ Fascimile from Bette M. Swilley, DeKalb County School System, to Schools and Libraries Division, Universal Service Administrative Company, filed July 2, 1999, at 13, 15; Request for Review at 1.

¹⁴ Administrator's Decision on Appeal. Although under SLD's procedures, applicants whose requests are rejected receive an explanation of those rejections in a funding commitment decision letter from SLD, the funding commitment decision letter issued by SLD on October 26, 1999 granting DeKalb its other FRNs made no mention of the 69 FRNs at issue. See Funding Commitment Decision Letter. DeKalb explains that it learned of the rejection of the FRNs when it inquired with SLD, after observing the omission of the FRNs from the Funding Commitment Decision Letter. Letter from Bette M. Swilley, DeKalb County School System, to Schools and Libraries Division, Universal Service Administrative Company, filed November 12, 1999 (SLD Appeal).

¹⁵ SLD Appeal.

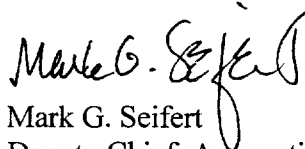
¹⁶ Administrator's Decision on Appeal at 1.

evident from the documentation DeKalb provided on July 2, 1999.¹⁷ On June 22, 2000, DeKalb filed the instant Request for Review.¹⁸

7. We find that the information submitted by DeKalb to SLD on July 2, 1999, while its application was under review, provided sufficient indication to SLD that it had submitted the January 12, 1998 contract award date in error, and that the actual contract award date for those FRNs was January 4, 1996 (later extended on February 24, 1997). Our finding is consistent with SLD's policy that, if an applicant made a mistake completing its FCC Form 471 and there was other information contained in the application or provided during the Program Integrity Assurance (PIA) review process that presented the correct information, SLD will grant the appeal so long as the applicant points out the mistake, and demonstrates how SLD could have reasonably ascertained the true nature of the information.¹⁹ Because those facts are evident here, we remand to SLD for a determination of whether DeKalb had a pre-existing contract governing the FRNs at issue, and is eligible for discounts for those FRNs under program rules.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on June 22, 2000, by DeKalb County School System, Decatur, Georgia, IS GRANTED and REMANDED to the extent provided herein. We direct the Schools and Libraries Division to review DeKalb's funding application and, if warranted, to issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁷ *Id.*

¹⁸ Request for Review.

¹⁹ See SLD web site, <<http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>>. The PIA review process examines applicants' FCC Forms 471 and other documentation to ensure that the discounts recipients obtain are for eligible services, provided to eligible entities, for eligible uses. See SLD web site, <<http://www.sl.universalservice.org/reference/6pia.asp>>.